

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN D. BUNTING,	§	
	§	No. 465, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	in and for New Castle County
	§	
STATE OF DELAWARE,	§	Nos. 0006017614, 0003020930
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 4, 2005

Decided: March 7, 2005

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 7<sup>th</sup> day of March 2005, on consideration of the parties' briefs, it appears to the Court that:

(1) The defendant-appellant, Shawn D. Bunting, appeals a sentence of the Superior Court after findings were made that he violated the conditions of his probation. Bunting argues that the Superior Court lacked sufficiently reliable evidence to find him in possession of marijuana and cocaine found at his residence and, as a result, imposed an excessive sentence of five years at Level V incarceration. Bunting requests that this Court vacate his sentence and remand with instructions to impose a shorter period of

incarceration not to exceed one year. We find Bunting's argument unpersuasive. Accordingly, we affirm.

(2) On September 14, 2000, Bunting pled guilty in the Superior Court to one count of trafficking cocaine (between 5 and 50 grams).<sup>1</sup> He was sentenced to Level V incarceration suspended after a three year term of mandatory imprisonment, followed by six years of probationary supervision at various levels. Bunting completed his three year term at Level V and was serving a period of Level III probation with a "zero tolerance for substance abuse" at the time of his arrest on July 28, 2004. He was also serving probation on a separate conviction for possession of a deadly weapon by a person prohibited.<sup>2</sup>

(3) On July 28, 2004, Bunting was observed operating a vehicle by his Probation Officer, Janet New. Upon confirming that Bunting was operating the vehicle without a license, Officer New arranged for Bunting's vehicle to be stopped by the police. The officers searched Bunting's vehicle and discovered sixteen bags of marijuana with a total weight of 13.5 grams. Thereafter, Officer New contacted the Governor's Task Force to conduct an administrative search of Bunting's residence. During that search, the

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<sup>1</sup> DEL. CODE ANN. tit. 16, § 4753A (2005).

<sup>2</sup> DEL. CODE ANN. tit. 11, § 1448A (2005).

officers located 113.5 grams of marijuana and 1.7 grams of cocaine. These drugs were located in a bedroom allegedly belonging to Bunting.

(4) At the VOP hearing, Officer New testified concerning the stop of Bunting's vehicle and the drugs found in the bedroom. Officer New further testified that she ascertained on prior occasions that the bedroom was where Bunting slept. Papers found in the bedroom at the time of the search had Bunting's name on them. The Superior Court found that Bunting had violated the conditions of probation. For the violation of probation on the trafficking conviction, Bunting was sentenced to five years imprisonment at Level V. For the weapon offense, Bunting was sentenced to five years imprisonment at Level V which was suspended for one year at Level III.

(5) A sentence of probation is an "act of grace."<sup>3</sup> Likewise, the revocation of probation is an exercise of broad discretionary power.<sup>4</sup> Accordingly, we review for abuse of discretion the Superior Court's revocation of a defendant's probation.<sup>5</sup> We also review a Superior Court's sentencing decision to determine "whether the sentence is within the statutory limits prescribed by the General Assembly and whether it is based

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<sup>3</sup> *Brown v. State*, 249 A.2d 269, 271-72 (Del. 1968) (citing *Burns v. United States*, 287 U.S. 216 (1932); *Brill v. State*, 32 So.2d 607 (Fla. 1947); *Scott v. State*, 208 A.2d 575 (Md. 1965)).

<sup>4</sup> *Id.*

<sup>5</sup> *Fuller v. State*, 844 A.2d 290, 291 (Del. 2004) (citing *Brown*, 249 A.2d at 271-72).

on factual predicates which are false, impermissible, or lack minimal reliability, judicial vindictiveness or bias, or a closed mind.”<sup>6</sup> “When the sentence is within the statutory limits, this Court will not find an abuse of discretion unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.”<sup>7</sup>

(6) In this appeal, Bunting does not dispute the fact that there was sufficient evidence to find him in violation of his probation with respect to his possession of the 13.5 grams of marijuana found in his vehicle. Rather, it is Bunting’s contention that the Superior Court lacked sufficiently reliable evidence to find him in violation of his probation with respect to the 113.5 grams of marijuana and 1.7 grams of cocaine found in his residence. He argues that the Superior Court relied on impermissible hearsay to establish his possessory interest in the drugs found in the bedroom.

(7) We first find Bunting’s argument unpersuasive because there was sufficient competent evidence in the record that Bunting had violated the terms of his probation with respect to the drugs found in the bedroom. It is well-settled in Delaware that hearsay evidence is admissible at VOP hearings because the rules of evidence normally applicable in a criminal trial

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<sup>6</sup> *Weston v. State*, 832 A.2d 742, 746 (Del. 2003) (citing *Siple v. State*, 701 A.2d 79, 83 (Del. 1997); *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992)).

<sup>7</sup> *Id.* (citing *Samuel v. State*, 1997 Del. LEXIS 133, at \*3-\*4).

do not apply.<sup>8</sup> At the VOP hearing, there must be some competent evidence to prove the probation violation, but the evidence need not establish guilt beyond a reasonable doubt.<sup>9</sup> “All that is required is that the evidence and facts be such as to reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”<sup>10</sup> In this case, sufficient competent evidence exists in the record to support the Superior Court’s finding that Bunting had violated the terms of his probation. At the VOP hearing, Officer New testified that she visited Bunting’s residence on two or three occasions and had ascertained from both Bunting and his family members that the bedroom in question belonged to Bunting. Furthermore, the officers, including Officer New, found papers in the bedroom bearing Bunting’s name. These facts support the Superior Court’s finding. Therefore, the Superior Court did not abuse its discretion by finding Bunting in violation of the conditions of his probation.

(8) We also conclude that the Superior Court did not abuse its discretion by finding Bunting in violation of the terms of his probation based on the fact that he was serving Level III probation with a “zero tolerance for substance abuse” at the time his vehicle was stopped. The fact that Bunting

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<sup>8</sup> *Brown*, 249 A.2d at 272.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

acknowledges his probation violation with respect to the marijuana found in his vehicle subjected him to potential imprisonment up to the balance of his suspended sentence.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are ***AFFIRMED***.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice